

Governor's Blue Ribbon Water Task Force

Draft Meeting Notes

June 28-29, 2006

Attendees: Myron Armijo, Conci Bokum, Brian Burnett, Frank Chaves, Eileen Grevey-Hillson, Lisa Henne, Steve Hernandez, Bill Hume, Howard Hutchinson, Sarah Kotchian, John Leeper, Estevan Lopez, Elmer Salazar, Jack Westman,

Challenge to Domestic Well Statutes

Steve Hernandez reported that he has filed a lawsuit challenging the constitutionality of the domestic wells statutes. His clients are senior water rights holders in the Mimbres basin. Steve explained that this case is ideal for challenging the statutes because it originates in an adjudicated basin. Steve Hernandez added that he thinks the legislature needs to be prepared for what could happen if he wins the lawsuit. The intent of the lawsuit is to address new domestic wells, but it could also affect existing users even though that is not the intent of the lawsuit.

John D'Antonio responded that he hoped that the court would consider the new rules and regulations that the OSE has developed. John also expressed concern that the regulations could be implemented punitively and would essentially set up the whole state as a domestic well management area without regard to the local situation. John stated that he prefers to have the flexibility to implement domestic well management areas to apply the regulations. Steve pointed out that because the new rules and regulations are based on the challenged statute, they would fall if the statute falls.

Steve also commented that the expedited transfer provision in the new rules and regulations will be challenged. John responded that the acequias have expressed concern about expedited transfer, and the OSE is now calling it a transfer without notice. John explained that the transfer without notice is intended to provide a non-punitive way to allow owners to transfer a small amount of water without going through the notice process.

Jack Westman commented that an overall plan for dealing with the possible outcome of the lawsuit is needed, and that many groups in the state need to understand the implications of the lawsuit. For example, if Steve wins the case, new domestic well applicants would have to go through a full process. Jack suggested that John D'Antonio propose legislation to avoid these kinds of problems.

Elmer Salazar commented that given the implications of the lawsuit, a proactive approach that included drafting legislation is warranted. Steve added that the lawsuit is an all-or-nothing case with no uncertainty, so it would be possible to anticipate what type of

legislation would be needed to ensure that the unintended consequences of the lawsuit can be mitigated.

Year of Water

Task Force members will be identifying key water issues that should receive emphasis in the coming legislative session and will develop a white paper and other materials containing recommendations for Governor Richardson. It will be important for different entities to express a consistent theme that can be promoted by the governor and the OSE/ISC. The target date for completion of the documents is September 15th. Bill Hume will work with Governor Richardson to formalize the role of the Task Force in doing outreach and developing recommendations. Brian Burnett commented that John's presentation at Angel Fire to the business community helped to clarify the importance of the settlement, and that this type of outreach is very effective.

Publicity for Navajo Settlement

Eileen Grevey-Hillson reported that Oprah Winfrey recently visited Window Rock, and that it might be good timing to submit background information and encourage her to produce a story on the Navajo settlement. Elmer Salazar commented that if Oprah were to do a story, it should include all of the settlements (Taos, Aamodt, and Navajo). Eileen agreed that if one looked at it from the standpoint of state government it would be important to not show favoritism, but if the goal is to raise national awareness that there is a nation in the United States that does not have running water, it would be better to focus on the Navajo settlement. Aamodt and Taos settlements are important, but don't have the same human interest aspects as Navajo. Eileen added that once there is a national awareness of the Navajo settlement, it opens the door for a better understanding of the importance of all of the settlements.

Eileen also commented that if Oprah did a story on the Navajo settlement, it would be her project and would not be the same as having the state show favoritism. Steve Hernandez added that ultimately, the producer makes the call and provides the scope. Steve added that it would be best to provide a broad picture so that she can decide. John Leeper suggested sending a cover letter that outlines the issues along with a copy of the video.

Elmer Salazar asked John Leeper if he thought that the Navajo Nation would want Oprah to talk about their water issues. John replied that he would check into it. Eileen and John Leeper volunteered to work on getting feedback from the tribe about this idea.

Water for a Nation Video

Karin Stangl showed the Water for a Nation video, which describes conditions on the Navajo reservation and discusses the settlement, and asked for comments. Karin explained that the short video is in final form, but that KNME is interested in co-producing a longer version of the video.

Task Force members were interested in learning more about the statistics related to households without running water, and specifically how they fit into the national picture. John Leeper commented that the statistics vary with the data sources and methodologies used, but that the statistic that 20-30% of households on the Navajo reservation lack running water is very easy to show. John Leeper added that Jim Dunlap has stated that of the US households that don't have running water, 80-90% of them are from the Navajo Nation. Jack Westman remarked that the higher statistic has a greater impact and would be more likely to get attention in Washington. Jack added that the average US congressman does not realize how big the Navajo Nation is, and therefore would not necessarily grasp how many households comprise the 20-30% statistic.

Eileen Grevey-Hillson commented that she would like to see the federal trust responsibility highlighted more in the longer version of the video, along with the fact that the impact of the settlement is much larger than regional. In particular, Eileen suggested that a discussion of what could happen if the settlement went into litigation would be helpful for educating the viewers on the settlement's broader relevance. Eileen also suggested including more footage of children and of Ms. Watchman, and suggested inviting Tony Hillerman to provide commentary.

Frank Chaves commented that the statement about the federal trust responsibility is a critical piece, and that if there are going to be different versions of this video, they need to be targeted to the audience. Frank also noted that it is important to remember that the settlement involves a relinquishing of water rights, and asked what the state support that is mentioned in the video translates into. Bill Hume commented that pushing the federal trust responsibility to the US legislators has not worked in the past. Frank responded that if the state portion of the settlement is there but the federal portion is not, the state needs to push back. Bill commented that there is some fear that if Navajo is settled and funded, then it might be years before the others are funded.

Frank reminded Task Force members that the group initially agreed that the main stakeholders need to drive this.

Conci Bokum commented that the federal trust responsibility has to be fully explained, including the context and history. Howard Hutchinson added that the federal trust responsibility is not just about water rights, but includes other fiscal responsibilities of the federal government that can not be met without water. Howard pointed out that creating an economic engine is going to generate a tremendous revenue both at the federal and state levels.

Brian Burnett suggested including more context to the settlement, including more explanation through maps and graphics. Sarah Kotchian added that adding another map to show the location of the Navajo Nation would be helpful for orienting viewers. John D'Antonio suggested showing a cadre of eastern states that fit into the boundary of the Navajo Nation. Myron Armijo responded to comments about context by explaining that the short video works better if the person presenting it can provide the context.

Update from OSE and ISC

John D'Antonio showed Task Force members a brochure distributed by the New Mexico Industrial Development Executives Association (NMIDEA) Incentives for Jobs Coalition (<http://www.nmidea.org/incentives-for-jobs.html>). The brochure presents an 8-bill economic development legislative package. The OSE will submit a paragraph about agency needs to include in the brochure, and John suggested that the Blue Ribbon Task Force might want to do the same.

John commented that for legislative priorities, the referendum to make water trust fund a permanent fund is critical in that it would create a revenue stream for funding water initiatives. John added that he saw it as an opportunity for Governor Richardson to create a legacy as the governor who put water in the forefront in New Mexico.

John reported that he and Estevan Lopez had attended an Upper Colorado Basin Coalition meeting in Jackson, Wyoming at which hydrologic determination issues were discussed. The hydrologic determination determines whether there is enough water available to meet the terms of the Navajo settlement. John told Task Force members that Colorado does not want to accept the findings of the hydrologic determination because of other interstate issues. The OSE/ISC gained support from other members of the coalition, but those members did not want to accept the hydrologic determination unless it was a unanimous decision. Further negotiations and agreements resulted in a unanimous approval of a resolution to accept the hydrologic determination.

John also reported that the OSE had a meeting in the Mimbres basin to address water shortages. John explained that the senior user on the downstream end wants to do a priority call on the basin. Under priority administration, the senior user would use his allotment by the end of July. The OSE believes that an irrigation rotation agreement that would allow everyone to use more of their allotment would work better. Shortage sharing would be another option. John added that the OSE is looking at the Jemez area as an example of a successful irrigation rotation agreement. In the Jemez, the rotation agreement is that Indian users get water for 6 days and non-Indians for 1 day. John commented that for the OSE to try to enforce by priority administration is very difficult to do without water master manuals, etc., and the OSE is pushing alternative agreements because of this.

Conci Bokum commented that priority call could affect existing domestic well users, and the lawsuit could end up protecting existing uses. Conci added that many people are confused about the difference between AWRM and the litigation.

Estevan Lopez reported that an issue has come up in the Pecos in which the ISC is getting competition for land purchases that are being implemented as part of the settlement. The competition is coming from an individual who is buying up land to start pecan orchards. Dairies are also moving into the area and are buying property for water rights. This direct competition with purchase program is putting a strain on the ISC acquisition program. The ISC is planning to convene the Lower Pecos Committee to get advice and

help, and also plans to talk to the competing land buyer. An additional concern to the ISC is the high water consumption associated with pecan crops, and the possibility of additional depletions.

Estevan also reported that ISC projections indicate that next year or the following year there will not be enough water available in the Middle Rio Grande to meet the requirements of the biological opinion for the silvery minnow. Estevan explained that the landscape for water releases to protect the minnow is changing as people start to use their San Juan Chama water and Article 7 restrictions. Unless there is adequate precipitation this coming winter, the only water available will be what is remaining in Vado Lake and some San Juan Chama water. Estevan explained that the ISC has been consulting with agencies and is setting up a transparent public process that could lead to a modification of the biological opinion to include provisions for critical water years or critically dry scenarios. The ISC will try to hold a facilitated meeting with stakeholders to help define the range of alternatives. The stakeholder group needs to be built around the ESA Collaborative, pueblos, and plaintiffs that have been involved in getting the protection for the silvery minnow. Estevan commented that he wants to engage these parties in order to understand their issues and help find a better way to deal with this problem.

Conci Bokum commented that the situation on the Middle Rio Grande brings up the issue that we are in a severe drought but one would not know that from reading the newspaper. Conci added that there is an urgent need to educate people, and that people respond better when they find out early rather than late that there is a problem. Jack Westman commented that the Albuquerque Journal regularly publishes articles about the drought, so perhaps the education problem is more localized. Jack added that the City of Albuquerque is making significant progress with conservation.

Conci responded that the 2004 Papadopolous report predicts a 70,000-121,000 acre-feet per year deficit for the Middle Rio Grande, which contradicts claims that the region has sufficient water. Conci mentioned that the ISC and the Water Dialogue are co-sponsoring a series of workshops that include representatives from the Jemez y Sangre, Middle Rio Grande, and Socorro-Sierra regional water planning groups. The workshop is being held to address this specific problem. Brian Burnett encouraged Conci to write some text that explains the problem so that the Task Force members can arrive at a common understanding of the risk and communicate it to others.